

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* WANGLER/PASCHKE, Minors.

FOR PUBLICATION  
May 27, 2014  
9:20 a.m.

No. 318186  
Sanilac Circuit Court  
Family Division  
LC No. 07-035009 - NA

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Advance Sheets Version

Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

HOEKSTRA, P.J.

Respondent appeals as of right the trial court's order terminating her parental rights to three minor children pursuant to MCL 712A.19b(3)(a)(ii) (child's parent deserted the child), (c)(i) (conditions that led to adjudication continue to exist), and (g) (failure to provide proper care or custody). On appeal, respondent challenges only the validity of the trial court's exercise of jurisdiction over the minor children. Because respondent's challenge is an impermissible collateral attack on the trial court's exercise of jurisdiction, we affirm.

On January 11, 2012, petitioner, the Department of Human Services (DHS), requested that the trial court take jurisdiction over the minor children after investigating respondent in response to a complaint that she was using heroin and was involved in a domestic violence incident with her boyfriend. Petitioner alleged that respondent continued to test positive for heroin and could not provide a safe environment for the minor children. On January 13, 2012, the trial court entered an order following a preliminary hearing placing the children under petitioner's supervision. It also ordered the parties to participate in mediation. On February 10, 2012, respondent consented to the placement of one of the minor children with that child's father. Mediation occurred on February 28, 2012. Following mediation, the parties entered into an agreement that provided that respondent would plead to certain allegations in the petition in order to confer jurisdiction over the minor children; however, the actual adjudication would be held in abeyance for a period of six months during which time she would participate in services and supervised visitation. The agreement further set forth the consequences of a plea of admission. The agreement was signed by respondent. On February 28, 2012, the trial court accepted the mediation agreement and adopted it as an order of the court.

Thereafter, petitioner provided services to respondent consistent with the service plan that was set forth by the mediation agreement, including drug treatment services and supervised

visitation with the children. Dispositional review hearings were held on May 3, 2012, August 2, 2012, and November 1, 2012. Respondent did not appear at any of the hearings, but her attorney was present at all three. Following each hearing, the trial court continued its prior orders without formally accepting respondent's plea and taking jurisdiction over the minor children. Following the dispositional review hearing on May 3, 2012, another one of the minor children was placed with that child's father. The remaining minor child was placed with his grandparents following the August 2, 2012 dispositional review hearing.

The next dispositional review hearing was held on January 31, 2013, and respondent was again not present. At this hearing, a DHS employee stated that reunification was no longer a viable option in light of respondent's lack of progress, and noted that the court still had not formally entered an order of adjudication taking jurisdiction over the children. Petitioner noted that the parties entered into a mediation agreement, and that respondent had not continued to comply with the ordered services; therefore, pursuant to the agreement, the trial court could accept respondent's plea and take jurisdiction over the minor children. Respondent's attorney agreed that the mediation agreement empowered the trial court to take jurisdiction over the children. The trial court then stated on the record that it was taking "formal jurisdiction" and authorized petitioner to file a supplemental petition asking for termination of respondent's parental rights.

Consistent with the trial court's statements on the record, an "order following dispositional review" was entered on February 4, 2013. The order noted that the children had been removed from respondent's care, that reasonable efforts to finalize the court-approved permanency plan of reunification were made, and that the children would continue to remain under petitioner's care and supervision. An additional document was attached to the order wherein the trial court formally entered an adjudication order. The order stated that "based upon the stipulated mediation resolution, the court takes formal jurisdiction of the minor children . . . ." The order further noted that it was "contrary to the best interest of the children to be in the mother's home based on the content of the petition." Finally, the order gave petitioner discretion to file a supplemental petition requesting termination of respondent's parental rights.

On March 13, 2013, petitioner filed a supplemental petition seeking termination of respondent's parental rights. A termination hearing was held on June 26, 2013, and on July 16, 2013, an order terminating respondent's parental rights and the trial court's written opinion were entered. Thereafter, this appeal ensued.

On appeal, respondent argues that the written plea that was incorporated into the mediation agreement was invalid, and therefore, it could not form a basis for the trial court to take jurisdiction over the minor children. Further, respondent argues that the trial court's exercise of jurisdiction over the minor children was invalid because she was not present at the hearing following which the trial court formally exercised its jurisdiction over the minor children. Respondent acknowledges in her brief on appeal that jurisdiction cannot be collaterally attacked; however, she argues that because the termination hearing immediately followed the court's order of adjudication, her jurisdictional challenge should not be considered a collateral attack.

MCL 712A.2(b)(2) provides a court with jurisdiction in proceedings regarding a minor child found within the county “[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . . is an unfit place for the juvenile to live in.” The determination whether a court has jurisdiction over a minor child begins with the court’s preliminary proceeding following the filing of a petition. *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993). The petition sets forth the charges against the parent, and at the preliminary hearing the court must determine whether there is probable cause to substantiate the facts alleged in the petition and whether the facts alleged in the petition, if proved, would fall under MCL 712A.2(b)(2). *In re Hatcher*, 443 Mich at 434-345. If the court authorizes the petition for jurisdiction during the preliminary hearing, it will generally issue a preliminary order specifying a plan for temporary placement. *Id.* at 435.

Generally, the adjudicative phase will follow the preliminary hearing. *Id.* During the adjudicative phase, the court determines “whether the child is neglected within the meaning of [MCL 712A.2(b)(2)] and then orders the disposition or placement that comports with the child’s best interests.” *Id.* at 435-436. As explained by this Court in *In re SLH*, 277 Mich App 662, 669 n 13; 747 NW2d 547 (2008):

Some, but not all, courts issue an Order of Adjudication following the plea or a trial at which jurisdiction was found. Other courts, however, do not issue an Order of Adjudication but only an order of disposition that includes the statement that “[a]n adjudication was held and the child(ren) was/were found to come within the jurisdiction of the court.” MCR 3.993(B) provides that an Order of Adjudication may only be appealed by leave granted, whereas an initial order of disposition is the first order appealable as of right. Accordingly, because an initial order of disposition is the first order appealable as of right, an appeal of the adjudication following the issuance of an initial dispositional order is not a collateral attack on the initial adjudication, but a direct appeal, notwithstanding that a termination of parental rights may have occurred at the initial dispositional hearing.

MCR 3.993(A)(1) provides that an order of disposition placing a minor under the supervision of the court or removing the minor from the home” is appealable by right; MCR 3.993(B) provides that all orders not listed in subrule (A) are appealable by leave.

Therefore, during the adjudicative stage, the court merely determines whether it has jurisdiction over the minor child by determining whether the respondent’s conduct created a situation in which the child’s “home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity . . . is an unfit place for the juvenile to live in,” under MCL 712A.2(b)(2). An adjudication finding that the court may take jurisdiction over a minor child does not involve an order authorizing any specific consequences for the respondent. The dispositional phase of the proceedings concerns the consequences arising from the fact of the adjudication. During the dispositional phase of the proceedings, the court can order placement of a minor child, visitation, services, or any other specific action involving the respondent and the minor child that is under the court’s jurisdiction.

“Ordinarily, an adjudication cannot be collaterally attacked following an order terminating parental rights.” *In re SLH*, 277 Mich App at 668. See also *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Said differently, a respondent may not challenge the trial court’s adjudication, meaning its exercise of jurisdiction, “when a termination occurs following the filing of a supplemental petition for termination after the issuance of the dispositional order.” *In re SLH*, 277 Mich App at 668. However,

[i]f termination occurs at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction, then an attack on the adjudication is direct and not collateral, as long as the appeal is from an initial order of disposition containing both a finding that an adjudication was held and a finding that the children came within the jurisdiction of the court. [*Id.* at 668-669.]

Accordingly, the issue we must resolve is whether termination occurred at the initial disposition such that respondent’s attack on the trial court’s exercise of jurisdiction is a direct appeal or whether there was an order of disposition that respondent was required to appeal as of right in order to challenge the trial court’s exercise of jurisdiction.

In this case, contrary to the typical order of proceedings, the trial court ordered the parties to engage in mediation immediately after the preliminary hearing wherein it found probable cause to authorize the petition and ordered temporary placement of the minor children. During mediation, the parties negotiated an agreement that was signed by all participants, including respondent. The agreement first sets forth the consequences of the court’s acceptance of respondent’s plea of admission. The agreement then states that respondent admits several paragraphs of the petition. Further, the agreement states that respondent’s plea of admission and the court’s exercise of jurisdiction would “be held in abeyance,” while respondent participated in services. Accordingly, the agreement authorized dispositional proceedings to begin before formal adjudication. Specifically, respondent agreed to comply with a service plan including residential treatment, outpatient services, random drug screens, and a no contact order. The agreement also provided for supervised parenting time. As the case progressed, it became clear that respondent was not making significant progress, and eventually, the trial court accepted respondent’s plea of admission and took formal jurisdiction over the minor children following a dispositional review hearing held on January 31, 2013.

The order following the dispositional review hearing dated February 4, 2013, constituted the trial court’s formal order of adjudication because it was the first order wherein the trial court formally exercised its jurisdiction pursuant to the mediation agreement. The same order also constituted an “order of disposition placing a minor under the supervision of the court or removing the minor from the home,” under MCR 3.993(A)(1). The order noted that the minor children were removed from respondent’s care, that reasonable efforts to finalize the court-approved permanency plan of reunification were made, and that the children would continue to remain under the care and supervision of petitioner. It also authorized petitioner to file a supplemental petition requesting termination of respondent’s parental rights. Therefore, because under the February 4, 2013 order the trial court formally exercised its jurisdiction over the minor children and placed the minor children under the supervision of petitioner, it constituted an order that was appealable as of right under MCR 3.993(A)(1). As a result, respondent was required to

raise her jurisdictional challenges in an appeal of the February 4, 2013 order. Because respondent instead waited until after the filing of a supplemental petition seeking termination, a termination hearing, and an order terminating her parental rights before challenging the trial court's exercise of jurisdiction, her challenges on appeal to the trial court's exercise of jurisdiction constitute an impermissible collateral attack and we will not consider the merits of her argument. See *In re SLH*, 227 Mich App at 668 (explaining that an adjudication cannot be collaterally attacked when a termination occurs following the filing of a supplemental petition for termination after the issuance of the initial dispositional order); *In re Gazella*, 264 Mich App at 680 (holding that the respondent lost her right to challenge the court's exercise of jurisdiction because she failed to appeal the original order of disposition).

Affirmed.

/s/ Joel P. Hoekstra

/s/ David H. Sawyer